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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,479	01/22/2002	Andreas Jakob	34351	6519
116	7590	12/19/2005	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			NI, SUHAN	
			ART UNIT	PAPER NUMBER
			2646	

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/054,479	<b>Applicant(s)</b> JAKOB, ANDREAS	
	<b>Examiner</b> Suhan Ni	<b>Art Unit</b> 2646	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This communication is responsive to the amendment dated 06/21/2004.
2. The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group **Art Unit 2646**.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R.1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 1-22 and 24-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 34-68 of U. S. Patent Application, 09/804,848. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-22 and 24-34 of this application are similar in scope to claim 34-68 of the previously mentioned application, 09/804,848 with obvious wording variations.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 26-30 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 26-30 and 32 are all depended upon a cancelled claim, claim 23.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-22, 24-25, 31 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng et al. (WO – 01/87014).

Regarding claims 1-3 and 22, Feng et al. disclose a binaural hearing device set (Fig. 2), comprising: a pair of hearing devices (33a/b); and a communication link (27a/b) between said

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pair of hearing devices, wherein said communication link comprises a pair of body electrodes (33) for establishing an electrically conductive communication path by using the body of an individual wearing said binaural hearing device set as an electrical conductor (Fig. 1), each of said pair of hearing devices comprises an electrical to mechanical output converter (24a/b). But Feng et al. do not clearly teach that said communication link further comprises at least one single wire as claimed. Since providing a wire for partially forming the communication link for a binaural hearing device is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable conductive wire for the communication link as an alternate choice, in order to reduce undesirable interference and noises, and also to make the communication link more stable under certain circumstances.

Regarding claims 4-7 and 24, Feng et al. further disclose the hearing device, wherein said communication link further comprises an electronic unit (410) and two single wires (Fig. 12) respectively connectable to said hearing devices (30a/b) on one side and to said electronic unit on the other side.

Regarding claims 8-12 and 25, Feng et al. do not clearly teach that said electronic unit comprises a wireless transmitter/receiver unit as claimed. But Feng et al do teach the electronic unit connected to a database (490), and providing a suitable access link for an electronic unit to access a database is very well known in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable access link, such as a wireless link for the device, in order to access database effectively.

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Regarding claims 13-21 and 31, Feng et al. do not clearly teach for the details of the electrode as claimed. Since providing a suitable electrode, especially those commercially available electrode for the communication link is very well known in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable electrode, such as a plate type electrode for the device, in order to provide the communication link efficiently and effectively.

Regarding claims 33-34, Feng et al. further disclose the hearing device, wherein the hearing devices are ITE or OTE hearing aid devices (Figs. 3 and 5) as claimed.

#### ***Response to Amendment***

6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

7. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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8. Any response to this final action should be mailed to:

**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

or faxed to:

**(703) 308-9051**, (for formal communications; please mark "EXPEDITED  
PROCEDURE"), or


**(703) 305-9508**, (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(571)-272-7505**, and the number for fax machine is **(571)-273-7505**. The examiner can normally be reached on Monday through Thursday from 10:00 am to 8:00 pm. If it is necessary, the examiner's supervisor, **Sinh N. Tran**, can be reached at **(571)-272-7564**.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(703) 305-3900**.

December 8, 2005

  
**SUHAN NI**  
**PRIMARY EXAMINER**